



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

NOV 14 2016

Ref: 8ENF-W-NP

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Mark Campbell, Administrative Manager
Kiewit Infrastructure Co.
160 Inverness Drive West, Suite 110
Englewood, Colorado 80112

Re: Request for Information Pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318

Dear Mr. Campbell:

The Environmental Protection Agency is investigating the compliance of Kiewit Infrastructure Co. (Company) with the requirements of the Clean Water Act. This pertains to the I-25 widening project north of Colorado Springs that began in 2013 and ended in 2015. As part of the EPA's investigation, the EPA requests that the Company provide the information requested with this letter. The EPA has the authority to request this information under section 308 of the Clean Water Act, 33 U.S.C. § 1318, in order to carry out its responsibilities for protecting our nation's water from pollution.

Please send the requested information no later than **thirty (30) days** of your receipt of this letter to the following:

U.S. EPA Region 8 (8ENF-W-NP)
NPDES Enforcement Unit
1595 Wynkoop Street
Denver, CO 80202-1129
Attn: Laurel Dygowski

In accordance with the instructions in Enclosure 1, please provide the information requested in Enclosure 2. The Company's response to this request **must be accompanied by a signed and dated Statement of Certification**. It must be signed by an individual who is authorized by the Company to respond to this request. The Certification must state that the response is complete and contains all information and documentation available to the company that is responsive to this request. A sample Statement of Certification is Enclosure 4.

The Company may claim that the EPA should treat any of the requested information as confidential business information (CBI). To make such a claim, the Company will need to follow the procedures in 40 C.F.R. part 2, subpart B (as promulgated at 41 Fed. Reg. 36902 on Sept. 1, 1976, 43 Fed. Reg. 39997 on Sept. 8, 1978, and 50 Fed. Reg. 51654 on Dec. 18, 1985). If the Company makes a confidentiality claim, the EPA will disclose the information covered by the Company's claim only as allowed by that

subpart. Please note that making a confidentiality claim does not guarantee that the EPA will agree that the information is entitled to confidential treatment. If the Company does not make such a claim when it submits the information to the EPA, the EPA may make the information available to the public without notifying the Company. The Company **is required to provide the requested information** even if it claims it is confidential.

If the Company is a small business, it may find the enclosed Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet (Enclosure 5) useful. This information sheet contains information on compliance assistance resources and tools available to small businesses. By including this information sheet, the EPA has not necessarily determined that the Company is a small business. SBREFA does not eliminate the Company's responsibility to respond to this information request.

It is very important that the Company respond to this request for information, and its attention to this matter is greatly appreciated. Please note that the failure to provide required information may potentially result in civil penalties of up to \$51,570 per day of violation, and that even harsher criminal consequences are possible in the case of deliberate false statements. (33 U.S.C. § 1319; see also 18 U.S.C. § 1001.)

This Request for Information is exempt from the approval requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq.

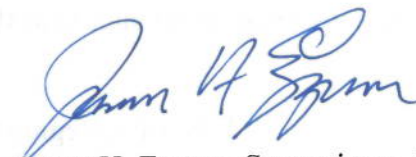
For any questions concerning this information request, the Company should contact Laurel Dygowski at 303-312-6144 or dygowski.laurel@epa.gov. If the Company is represented by an attorney who has questions, the attorney should contact Peggy Livingston, EPA Senior Enforcement Attorney, at 303-312-6858 or livingston.peggy@epa.gov.

Thank you for your cooperation.

Sincerely,



Art Palomares, Director
Water Technical Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice



James H. Eppers, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance,
and Environmental Justice

Enclosures:

1. Instructions
2. Information Request
3. Excerpt from EPA's Inspection Report for CDOT's Municipal Separate Stormwater System (3A includes text; 3B includes photographs)
4. Statement of Certification
5. SBREFA information sheet

cc: Nathan Moore, CDPHE

ENCLOSURE 1:

INSTRUCTIONS

1. Please answer each numbered item and lettered sub-item in Enclosure 2 separately, and number your response to correspond with each item and sub-item.
2. Please provide all information in your possession that is responsive to each item and sub-item in Enclosure 2. If you cannot provide any piece of information, please explain why. If any numbered item or sub-item is not applicable, please indicate N/A.
3. If you do not know or have available in your possession any of the requested information but learn about such information, you must supplement your response to the EPA. If, after submitting your response, you learn that any portion of your response is incomplete or false, or that it misrepresents the truth, you must notify the EPA as soon as possible of the exact manner in which the information is incomplete, false, or misleading.
4. If any information or document is responsive to this request and is not within your possession, custody or control, please identify each person from whom such information or documents may be obtained and where such information or documents are located.
5. If you have reason to believe that any other person may be able to provide additional details or documents, please provide the name, address, and if you know it, the telephone number of each person. Additionally, include a description of the additional information or documents you believe that this person may have.
6. For purposes of this request, the following definitions apply:

“BMPs” means best management practices.

“CDOT” means the Colorado Department of Transportation.

“Construction General Permit” means Colorado Discharge Permit System Permit No. COR030000, entitled Stormwater Discharges Associated with Construction Activity, issued May 31, 2007, and administratively continued effective July 1, 2012.

“Person” includes any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state or interstate body.

“Project” includes all construction related to widening and/or improving Interstate 25, at any time from 2013 through 2015, from Woodmen Road to immediately south of Highway 105, in or near Monument and Colorado Springs, Colorado.

“Site” means the approximately 440 acres encompassed by the Project.

“SWMP” means Stormwater Management Plan.

“WQCD” means the Water Quality Control Division of the State of Colorado Department of Public Health and Environment.

“You” and the “Company” mean Kiewit Infrastructure Co. and any of its officers, directors, employees, or agents.

ENCLOSURE 2:

INFORMATION REQUEST

Please provide the following information for the entirety of the Project:

1. Describe all arrangements between you and any other person regarding environmental permitting, environmental controls, inspections, and documentation of inspections at the Site.
2. Identify, by name, title, and current business address, each responsible individual, including each superintendent and construction foreman, for all construction related activities you have engaged in at the Site from the time of your first involvement at the Site until today.
3. Identify, by name, title, and current business address, each individual who has been responsible for the Company's environmental compliance and permitting at the Site.
4. Describe any structural controls (e.g., straw bale dikes, silt fences, check dams, drain inlet protection, sediment traps, drainage diversions) that were installed or implemented at the Site for controlling stormwater discharges. Indicate when and by whom each such structural control was installed and removed.
5. Provide the date when construction activity at the Site began. State whether construction is still occurring and, if not, when it ended.
6. Describe (by date and names of each individual involved) any oral communications you have had with the WQCD and/or CDOT and/or other government agencies regarding stormwater requirements, and provide copies of all written notes of such communications.
7. Provide copies of all written communication between the WQCD and/or CDOT and/or other government agencies regarding stormwater requirements.
8. Provide a copy of each of the following for the Site:
 - a. Each Notice of Intent (NOI) or application for an individual permit you submitted to the WQCD for authorization to discharge stormwater from the Site.
 - b. Any notice of transfer of stormwater permit coverage for the Site from another entity to you, or from you to another entity.
 - c. The permit certification page showing the effective date of your coverage under the Construction General Permit for stormwater discharges from the Site (or, if applicable, any individual permit authorizing you to discharge stormwater from the Site).
 - d. The SWMP for the Site, including all revisions.
 - e. All site maps of the Site associated with the SWMP. On each map, identify the types and locations of structural controls (e.g., straw bale dikes, silt fences, check dams, drain inlet protection, sediment traps, drainage

- diversions) you installed. Include the date when the structural controls were installed and removed if not clearly indicated on the site map(s).
- f. The name and title or position of each person who provided day-to-day operational control overseeing implementation of the SWMP, and each such person's current business address, and telephone number.
 - g. All reports for stormwater-related self-inspections you have conducted at the Site. If any such self-inspections were conducted by any other entity, indicate the type of agreement you had with the other entity to conduct these inspections. If that agreement was written, provide a copy.
 - h. All dates the self-inspections referenced above were conducted and any documentation you may have that may help prove that such self-inspections in fact occurred. If you provided a report of each self-inspection in response to subpart g, above, you need not answer this subpart.
 - i. Documentation of all corrective actions and maintenance measures identified in the self-inspection reports, including the dates corrective actions or maintenance measures were taken, including requisite changes to the SWMP. This includes, but is not limited to, corrective actions to address discharges of sediment or other pollutants from the Site; BMPs that needed to be maintained; BMPs that failed to operate as designed or proved inadequate for a particular location; and additional BMPs that were needed but not in place at the time of each inspection.
 - j. A narrative description and documentation of any stabilization measures implemented at the Site after the end of construction activities, including the date(s) of implementation.
 - k. A copy of any Inactivation Notice submitted to the WQCD for the Site.
 - l. Any documents exchanged between you, and/or any of your contractors or subcontractors, and/or WQCD and/or CDOT relating to stormwater that is not included in the information requested above.
 - m. Any photographs showing the condition of the Site, structural controls, or waterways.
9. Provide a copy of each (if any) noncompliance notification provided to WQCD relating to the Site.
10. List each waterbody (e.g., creek, river, pond) to which storm water from the Site flowed.
11. Enclosures 3A and 3B are excerpts from the EPA's inspection report for CDOT's Municipal Separate Stormwater System issued September 30, 2015 for an inspection conducted March 30 through April 2, 2015. Excerpt 3A contains EPA's findings as they pertain to the Site. Excerpt 3B contains photographs from the inspection. Indicate whether you take the position that any information or

finding in either excerpt is inaccurate or incomplete, and describe your basis for this position.

ENCLOSURE 3A:

Excerpt from the EPA's Inspection Report for CDOT's Municipal Separate Stormwater System

Issued September 30, 2015

Inspection Conducted March 30-April 2, 2015

I-25 Project - Kiewit

The EPA reviewed the I-25 widening project north of Colorado Springs (I-25 project). Kiewit was the contractor that performed the work. The I-25 project extended from just south of Highway 105 in Monument to just north of Woodmen Road in Colorado Springs. Work began at the end of March 2013, and the final walk-through with CDOT occurred on January 20, 2015 and February 4, 2015. At the time of the EPA's inspection, CDOT had taken control of the I-25 project, and it had almost reached final stabilization. As such, the EPA did not visit the I-25 project aside from driving by the project during the course of other site visits.

The primary CDOT Region 2 inspector, Ms. Erickson, was interviewed about her inspections and related work for the I-25 project, CDOT's inspection reports were reviewed from May 6, 2013 through March 24, 2015, which were a combination of monthly audits, post-storm inspections, and RECAT inspections. The information provided by Ms. Erickson and these reports indicate that CDOT identified inadequate BMPs, CDOT identified repetitive findings, Kiewit failed to correct findings within 48 hours on multiple occasions with CDOT's knowledge, and Kiewit failed to meet the requirements of the Construction General Permit.

Nature of Kiewit's non-compliance

An inspection report labeled "I-25 Post Rain Event Inspection. Northbound lane. Aug 23, 2013" was reviewed. Based on the August 23, 2013 inspection report, there were no or limited BMPs to control erosion at the I-25 Project, and the inspection report shows evidence of the resulting discharge of sediment to Pine Creek, Black Squirrel Creek, Jackson Creek, and Teachout Creek. The inspection report provides direction to Kiewit for adding and cleaning out BMPs. This inspection report was one example showing impacts to waters as a result of Kiewit's inaction and CDOT's failure to ensure compliance with the Construction General Permit, failure to enforce according to the Green Book, and failure to implement sanctions for chronic failures of Kiewit to comply with Green Book requirements. As demonstrated by this inspection report, Kiewit failed to comply with Parts I.D.2 (BMPs shall be adequately designed), I.D.8 (adequate site assessments shall assess adequacy of BMPs), and I.D.1.a (stormwater discharges shall not cause or contribute to exceedance of any water quality standard) of the Construction General Permit, all of which are cited in full above.

- Photos 1 and 2 in the August 23, 2013 inspection report show concrete culvert inlets that appear to be approximately 80-90% full with sediment, and the report noted that this was due to a lack of upstream BMPs. The report also stated for both photos 1 and 2, "Replace erosion logs around the inlet. Temporarily or permanently stabilize associated slopes discharging to the inlet. Add check dams to bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it."
- Additional photos in the August 23, 2013 inspection report show similar inlets where a straw wattle in front of the inlet appears to have been overcome with sediment (photos 6, 7, 9, 10, 11, and 19) or there was no protection around the inlet (photos 15, 17, 24, and 25). A significant amount of erosion appears around some inlets, as evidenced by rills and other channels where erosion appears to have occurred (photos 2, 6, 9, 11, 19, and 25).
- Photo 3 in the August 23, 2013 inspection report shows a concrete channel containing sediment and a disturbed hill with rills above the channel to the left. No BMPs are visible on the hill. The report states, "Temporarily or permanently stabilize associated slopes discharging to the ditch or install toe protection at toe of slope."
- Photos 4 and 5 of the August 23, 2013 inspection report show a detention pond at Woodmen Road with an outfall to Pine Creek. Photo 5 shows evidence of sediment discharged to Pine Creek through the outlet. The report states, "Block the outlet structure and use the permanent detention pond as a sediment trap until the upstream features are stabilized and the wall of the detention pond are also stabilized. Add a maintenance plan for the sediment trap to the SWMP."
- Photo 26 of the August 23, 2013 inspection report shows a disturbed drainage with no BMPs from mile marker 159.7 to 150 along I-25 and notes that a disturbed drainage of this length and associated slopes are "typically seen on this project with no BMPs, except erosion logs at the inlet."
- Photos of creek crossings in the August 23, 2013 inspection report show a lack of BMPs in the area, rills on the hillsides above the creeks, and sediment plumes in the creeks (photos 12, 16, and 22). Creeks included Black Squirrel Creek at mile marker 154, Jackson Creek at mile marker 157.8, and Teachout Creek at mile marker 159.5. The report noted that each of these areas was covered under a 404 permit, a sediment plume was in the creek, and instructed consultation with the Army Corps of Engineers for direction on cleaning up the area and installing proper BMPs to prevent discharge.

Chronic failures of Kiewit to comply with the Construction General Permit

Below is a summary of Kiewit's failure to follow BMP specifications, implement BMPs in the SWMP, and maintain BMPs identified during CDOT's 26 inspections of the I-25 project between May 6, 2013 and January 22, 2015. CDOT conducted more than one inspection during some months. The repetitive nature of some categories of failures by Kiewit, with many of these occurring during consecutive months, demonstrates the chronic nature of Kiewit's noncompliance with the Construction General Permit and chronic failure to implement CDOT

requirements. Kiewit failed to comply with Parts I.D.2 (BMPs shall be adequately designed), I.D.8 (adequate site assessments shall assess adequacy of BMPs), I.B.1 (the SWMP shall be implemented), and I.C.3.c (the SWMP shall include BMP specifications) of the Construction General Permit, all of which are cited in full above.

- Erosion logs (straw wattles) or rock socks were >50% full, overtopped, or otherwise not maintained during 12 of 26 inspections (5/6/13, 6/5/13, 8/22/13, 8/23/13, 8/28/13, 9/30/13, 10/30/13, 2/26/14, 6/2/14, 7/1/14, 7/24/14, and 10/24/14). This failure was identified during seven of eight CDOT inspections between May 6 and October 30, 2013.
- Silt fences were >50% full or otherwise not maintained during 13 of 26 inspections (5/6/13, 8/28/13, 9/30/13, 10/30/13, 12/16/13, 2/26/14, 3/19/14, 4/28/14, 5/29/14, 6/29/14, 7/1/14, 7/24/14, and 11/19/14).
- Vehicle tracking control was not implemented or not maintained during six of 26 inspections (5/6/13, 6/5/13, 9/30/13, 6/29/14, 7/1/14, and 8/19/14).
- Other BMPs were not maintained during five of 26 inspections (6/5/13, 4/28/14, 7/24/14, 10/24/14, and 11/16/14).
- BMPs were missing around inlet and outlet structures during eight of 26 inspections, and this occurred repeatedly in August, September and October of 2013 (8/22/13, 8/28/13, 9/30/13, 10/30/13, 4/28/14, 5/29/14, 8/19/14, and 10/24/14).
- Perimeter BMPs were missing during six of 26 inspections (5/6/13, 8/28/13, 9/30/13, 11/19/13, 4/28/14, and 5/29/14).
- Soil stock piles were missing BMPs during three of 26 inspections (5/6/13, 10/30/13, and 10/24/14).
- Other BMPs were not installed per the SWMP during six of 26 inspections (5/6/13, 8/28/13, 11/19/13, 4/28/14, 6/29/14, and 10/24/14).
- Rock check dams were not installed per specifications during seven of 26 inspections with this failure occurring during five of eight inspections between August 28, 2013 and March 19, 2014 (8/28/13, 11/19/13, 12/16/13, 2/26/14, 3/19/14, 6/29/14, and 9/17/14).
- Erosion blankets failed and/or were not installed per specifications during 10 of 26 inspections with this failure occurring during eight consecutive inspections between June 2 and November 19, 2014 (9/30/13, 4/28/14, 6/2/14, 6/29/14, 7/1/14, 7/24/14, 8/19/14, 9/17/14, 10/24/14, and 11/19/14).
- Stabilization measures were not installed per specifications or were not complete during five of 26 inspections (8/28/13, 3/19/14, 4/28/14, 7/24/14, and 11/19/14).

- Damage to seeded and mulched areas, including erosion, were not immediately repaired as required by the specifications during nine of 26 inspections with this occurring during five consecutive inspections between August 28 and December 16, 2013 (8/28/13, 9/30/13, 10/30/13, 11/19/13, 12/16/13, 3/19/14, 7/24/14, 10/24/14, and 11/19/14).
- Other BMPs were not installed per the specifications during four of 26 inspections (8/28/13, 9/30/13, 8/19/14, and 9/17/14).

Evidence of discharges to waters from I-25 project

CDOT's inspection reports also demonstrate impacts to waters from sediment on multiple dates from the I-25 project. As a result, Kiewit failed to comply with Part I.D.1.a of the Construction General Permit by causing, having the reasonable potential to cause, or measurably contributing to an exceedance of the water quality standard in CDPHE's Water Quality Control Commission Regulation 31.11. This water quality standard states that water will be free from substances attributable to human-caused point source or nonpoint source discharge in amounts, concentrations or combinations which form bottom deposits detrimental to the beneficial uses.

- The August 23, 2014 inspection report shows the detention pond outfall to Pine Creek (photo 5 of the report), and sediment is visible below the outfall. At Black Squirrel Creek, rills are shown leading into the creek and there are no BMPs along the creek as shown in photo 12 of the report; the caption notes a sediment plume in the creek. At Jackson Creek, there are no BMPs along the creek and flow paths into the creek are visible in photo 16 of the report. Photo 22 of the report shows no BMPs along Teachout Creek.
- The August 28, 2013 inspection report shows no BMPs along the Middle Tributary of Black Squirrel Creek with sediment in the channel and no BMPs above Teachout Creek. It also shows a silt fence near mile marker 158.75 that did not extend then entire length of a "wetland," and the silt fence was overtopped with sediment in sections. The inspection comments on page 33 of the report state, "The storm event resulted in multiple discharges from the site, including Waters of the State."
- The September 30, 2013 inspection report shows no BMPs along Black Forest Creek.
- The November 19, 2013 inspection report shows no BMPs along Jackson Creek.
- The April 28, 2014 inspection report shows no BMPs with no stabilization around Black Forest Creek and no BMPS (aside from mulching) in some areas along Teachout Creek. The report includes a photo at Teachout Creek showing a large rill leading into the creek.
- The March 19, 2014 inspection report indicates that BMPs around the outlet for Jackson Creek have not been maintained, and a photo of sediment on top of a broken silt fence. The caption for the photo indicates the silt fence may have been pushed over by grading activities.

- The May 29, 2014 inspection report shows a disturbed hillside above Jackson Creek with only a silt fence on a small portion of the left side of the hill. Most of the hill has no BMPs.
- The July 24, 2014 inspection report shows an eroded area around the wing wall above Jackson Creek, several rills along the hillside above Jackson Creek, and includes a photo showing rills and sediment that over topped a silt fence by Jackson Creek into a “wetland” area. Rills are also shown leading into Black Forest Creek, and the report notes that BMPs in the area had failed at least twice and need to be stronger.

Failure of Kiewit to select, install, implement, and maintain BMPs following good engineering, hydrologic and pollution control practices:

Ms. Erickson stated that Kiewit was told multiple times during CDOT’s monthly audit inspections that the BMPs being used on the site would not be adequate and that “more aggressive” BMPs needed to be installed. She stated that in her inspection reports, it was indicated that there was too much area draining to too small of a BMP, but Kiewit did not upgrade the BMPs. Ms. Erickson stated she knew the BMPs were too small, because upon visual assessment, she observed that small rain events resulted in the need for significant BMP maintenance. CDOT documented in several inspection reports that BMPs were not adequate to handle the flows. According to Ms. Erickson, Kiewit received the inspection reports through the inspection database system along with the PE, and was therefore aware of the inspection findings. Kiewit failed to select, install, implement, and maintain BMPs following good engineering, hydrologic and pollution control practices, as required by Part I.D.2 of the Construction General Permit. Kiewit failed to address the inadequacy of the BMPs, as required by Part I.D.8 of the Construction General Permit. By failing to address chronic noncompliance and escalate enforcement (issuing liquidated damages, issuing stop work orders) CDOT failed to ensure Kiewit complied with Part I.D.2 the Construction General Permit. See findings 1CS, 3CS, and 4CS for more details on CDOT’s failure to address chronic noncompliance and escalate enforcement. Below are examples where CDOT’s inspection reports document the inadequate BMPs.

- In the June 5, 2013 inspection report, Finding #5 states, “The current plan is to cut to final configuration including checks as they pave. However this phasing allows there to be a large disturbed area draining to a few culverts in the short interim. Install additional sediment controls until configuration is achieved. For example, we discussed putting a berm around the culverts to create a ponding...” The rest of the sentence is cut off from the copy provided to the EPA.
- In the August 22, 2013 inspection report, it states under an unnumbered finding on page 5, “The area discharging to Teachout Creek has large bare areas. The ditches leading to Teachout Creek to do not contain check dams. It has been noted by the on-site ECS that sediment transport during rain events is not significant in this area, however a BMP at the end of the ditch (such as a reinforced silt fence or compacted berm) is needed as a

precaution. All ditches in the same situation on the site also need a similar BMP installed as a precautionary measure."

- In the August 28, 2013 inspection report, Finding #6 states, "Area upstream of [Teachout Creek] needs additional sediment controls." The corrective action indicates that the US Army Corps of Engineers instructed Kiewit to leave downstream sediment as is and to look into willow staking these areas. Finding #9 states that surface roughening was not enough on steep slopes. Finding #11 states, "Only protection is inlet protection which has been overwhelmed. ...Install additional BMPs upstream..." Finding #12 states regarding a silt fence along Monument Creek, "The only sediment control in place is a reinforced silt fence along bank. Large (acres) drain here. Need additional BMPs upstream of reinforced silt fence (checks and/or sediment trap) and BMP needed along top of box and upstream of banks." The inspection comments on page 33 of the inspection report state, "Many findings occurred repeatedly and should be addressed site wide, not just at the locations noted in the inspection. They are as [follows]: multiple locations need perimeter control (in particular tracked slopes still need a sediment control at base), on steep and/or long slopes tracking does not appear adequate and additional BMPs are required (for example tackifier, rows of Erosion Control Log, Blanket, etc.), there are large open areas where the only BMP is at the inlet and additional BMPs are required upstream. In general much more redundancy is needed."
- In the September 30, 2013 inspection report, an unnumbered finding on page 18 of the report indicates that controls are needed in the flow line above an inlet. No BMPs are shown in the photo above the inlet.
- In the December 16, 2013 inspection report, an unnumbered finding on page 11 of the report states, "The erosion log around the inlet culvert is not an adequate BMP by [itself], because of large amount of disturbed area draining to the inlet. Enhance inlet protection or add some upstream BMPs."
- In the February 26, 2014 inspection report, an unnumbered finding on page 8 of the report states, "The [BMPs] in the ditch line are continually overwhelmed by sediment, which is filling downstream culverts. Reinforce and repair existing logs. Add additional, more aggressive, taller, [BMPs] such as straw bales."
- In the July 24, 2014 inspection report, an unnumbered finding on page 16 of the report states regarding an area where rills led into Black Forest Creek, "Repair areas of damage with a stronger BMP, as the areas in the photo have failed at least twice."
- In the September 17, 2014 inspection report, an unnumbered finding on page 8 of the report states regarding the Black Squirrel Creek area, "It appears that the ditch is inadequately designed to receive anticipated flows. Design amendment is required to avoid anticipated future illicit discharge in the area..." The finding on page 10 stated regarding No Name Creek, "Ditchline has not been properly contoured or armored to receive anticipated stormwater flow. Design amendment is required to avoid anticipated future illicit discharges in the area..."

Failure of Kiewit to implement corrective actions within 48 hours

Kiewit failed to implement several corrective actions within 48 hours. Some corrective actions took less than 10 days, but many took weeks or months to implement. The August 19, 2014 inspection report notes on page 33 that multiple findings exceeded the 48 hour time frame for corrections. In addition, there were some corrective actions that were never noted as corrected. The March 24, 2015 inspection report notes seven findings from September 18, 2014; October 24, 2014; and November 19, 2014 that remained uncorrected.

Following the EPA's inspection, CDOT provided a summary spreadsheet for various construction projects in all five Regions that included the number of corrective actions/findings, number of findings not corrected within 48 hours, number of findings not corrected in 96 hours, the number of 105 speed memos issued, the number of 105 speed memos with liquidated damages issued, and the total amount in liquidated damages associated with a project. Multiple corrective actions/findings can be addressed on one 105 speed memo. For the I-25 project, there were 223 corrective actions/findings, 69 corrective actions that went beyond 48 hours, 53 corrective actions that went beyond 96 hours, and 15 105 speed memos issued, two of which included liquidated damages.

According to the Green Book specification 208.09, liquidated damages will be applied for contractors failing to comply with the Construction General Permit and Green Book specifications. If corrections are not made within 48 hours from the date of notification from the PE, the contractor is charged \$875 for each calendar day after the 48 hour period that one or more failure remains uncorrected. Although two 105 speed memos with liquidated damages were issued for the I-25 project, none were collected. In addition, corrective actions took well beyond 48 hours for 69 findings following several of CDOT's inspections. Based on the March 24, 2015 inspection report, seven corrective actions from September, October, and November 2014 were never completed, as stated above. CDOT failed to implement the liquidated damages provision of the Green Book for the I-25 project.

Examples of the corrective actions that took much longer (>10 days) are listed below.

- The February 26, 2014 inspection report notes broken silt fence, erosion logs that need maintenance, installation of additional erosion logs, finishing of final stabilization where it is incomplete, and addition of BMPs in ditch lines where BMPs are overwhelmed, that were corrected in 30 days.
- Seeding repairs are noted in the March 19, 2014 inspection report and were completed in 43 days.
- A stabilization finding noted in the April 28, 2014 inspection report was addressed through stabilization measures implemented 16 days later.
- Gullies noted in the April 28, 2014 inspection report were addressed in 63 days.

- The June 2, 2014 inspection report identifies two locations with gullies under failing erosion blankets that were fixed in 25 and 28 days. One area with a failing erosion blanket was to be redesigned, but this corrective action plan was not entered into the database until 28 days later. It is unknown when the corrective action by Kiewit actually occurred since only the corrective action plan was entered.
- The June 29, 2014 inspection report identifies an area where the erosion blanket is overwhelmed by concentrated flow and the flow created a gully. The ditchline was reshaped, sprayed with Bio Earth, and reblanketed in 11 days.
- The July 24, 2014 inspection report notes erosion around the wing wall along Jackson Creek, and the slope was not repaired for 20 days. Temporary stabilization had not been applied as required, which was corrected with dirt glue in 28 days. Stabilization failed in an area, which was not corrected for 27 days. An area that had been seeded/mulched where a gully formed was regraded, reseeded/mulched, and erosion control logs were placed around the inlet after 125 days had passed. An area with an erosion blanket was installed without seeding underneath, and Green Book specification 216 requires soil retention covering to have seeding underneath; this was not corrected was not was corrected for 120 days .
- The August 19, 2014 inspection report notes two locations where permanent slope drains need to be installed, which were addressed in 65 and 94 days. Rock check dam spacing findings were corrected in 65 days. Rock that needed to be added to a drainage that was eroded was done in 65 days.

According to Ms. Erickson, she recommended the PE issue a stop work order for on-going BMP issues, and a stop work order was supposed to have been issued for the entire I-25 project in July 2014. However, Ms. Erickson indicated that a full stop work order may not have been issued, as she continued to observe contractors working at the site. There was no indication in the documentation provided to the EPA that a stop work order was issued by the PE. The August 19, 2014 inspection report states in the comments section on page 33, "In talking to the PE [liquidated damages] have been assessed and a schedule has been agreed upon to correct present findings (note 6 findings have not been addressed from last monthly conducted on 7/23/2014). The PE should continue to assess [liquidated damages] as necessary and review section 208.09 to pursue Stop Work order."

I-25 Post Rain Event Inspection. Northbound lane.**Aug 23, 2013**







	
<p>Photo 1: Inlet near mm 149.61. Near Woodman. Sta. 976+00. Discharges to permanent detention basin to Pine Creek.</p>	<p>Photo 2: Inlet near mm 149.67. Sta. 976+25. Discharges to permanent detention basin to Pine Creek.</p>
	
<p>Photo 3: Concrete channel mm 149-149.35. Discharges to Pine Creek.</p>	<p>Photo 4: Detention pond near end of project at Woodmen. Outfalls to Pine Creek.</p>
	
<p>Photo 5: Detention pond outfall to Pine Creek</p>	<p>Photo 6: Inlet at station 1138</p>



Photo 7: Inlet at station 1144



Photo 8: Outfall under exit 153 ramp



Photo 9: Inlet at exit 153 ramp



Photo 10: Inlet at mm 153.2, just past overpass



Photo 11: Inlet mm 153.35, near inactive hotel



Photo 12: Illicit discharge sediment plume into Black Squirrel Creek South at mm154, station 1218+50.



Photo 13: Illicit discharge into Black Squirrel Creek North at mm 154.3, sta. 1228+00.



Photo 14: Monument Creek at mm 157.



Photo 15: Inlet at mm 157.2



Photo 16: Beaver dam area at mm 157.8. Jackson Creek.



Photo 17: Inlet at mm 158.25



Photo 18: Run of water from Home Depot detention pond at mm 158.3



Photo 19: Inlet at mm 158.5



Photo 20: Inlet at mm 159 by Discount Tire



Photo 21: Clear water incoming to double RCP's at mm 159.5. Teachout Creek.



Photo 22: Illicit discharge on construction site after double RCP's at mm 159.5. Excavator worked in flowing water in Teachout Creek.



Photo 23: Pipe clean upstream of project, sediment in pipe downstream of project. Photo inside inlet at mm 159.7.



Photo 24: Photo of outside of inlet at mm 159.7



	
<p>Photo 25: Inlet at mm 159.8</p>	<p>Photo 26: Ditch from mm 159.7-160. A run of this length of disturbed ditch line and associated de-nuded slope is typically seen on this project with no BMP's, except erosion logs at the inlet.</p>

Photo 1: Inlet filled with sediment due to lack of upstream BMP's. Inlet, cross drain, and large RCP running down the center median strip of I-25 must be cleaned and sediment disposed of properly. Replace the erosion logs around the inlet. Temporarily or permanently stabilize associated slopes discharging to the inlet. Add check dams to bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it.

Photo 2: Inlet filled with sediment due to lack of upstream BMP's. Inlet, cross drain, and large RCP running down the center median strip of I-25 must be cleaned and sediment disposed of properly. Replace the erosion logs around the inlet. Temporarily or permanently stabilize associated slopes discharging to the inlet. Add check dams to bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it.

Photo 3: Sediment in flow line of concrete ditch. Clean concrete ditch. Temporarily or permanently stabilize associated slopes discharging to the ditch or install toe protection at toe of slope.

Photo 4 and 5: Permanent detention pond is discharging dirty water from the outfall. Block the outlet structure and use the permanent detention pond as a sediment trap until the upstream features are stabilized and the walls of the detention pond are also stabilized. Add a maintenance plan for the sediment trap to the SWMP.

Photo 6: Remove sediment from around the inlet. Clean sediment out of the pipe apron. Install new erosion logs.

Photo 7: Remove sediment from around the inlet. Clean sediment out of the pipe apron. Install a filtering BMP in front of the inlet, such as straw bales.

Photo 8: Remove sediment from outlet. Re-grade downstream of outlet so that it flows and does not back up. Install outlet protection as shown on pg. 5-6 of the Field Guide.

Photo 9: Inlet, cross drain, and RCP under the exit 153 ramp must be cleaned and sediment disposed of properly. Replace the erosion logs around the inlet.

Photo 10: Remove sediment from around the inlet. Clean sediment out of the pipe apron. Install new erosion logs.

Photo 11: Remove sediment from around the inlet. Clean sediment out of the pipe apron. Install new erosion logs.

Photo 12: This area is covered under a 404 permit. There is a sediment plume into the creek on both sides from the CDOT project. Consult the with Army Corps. for direction in cleaning up this area and installing proper BMP's to prevent an illicit discharge.

Photo 13: This area is covered under a 404 permit. There is a sediment plume into the creek on both sides from the CDOT project. Consult the with Army Corps. for direction in cleaning up this area and installing proper BMP's to prevent an illicit discharge.

Photo 14: Gully formed in a vegetated area from concentrated flow from off the project due to lack of upstream BMP's. Install a compacted berm at the end of the slope with a sediment basin in front of it.

Photo 15: Backfill around the inlet with dirt. Replace the erosion logs around the inlet. Temporarily or permanently stabilize associated slopes discharging to the inlet. Add check dams to bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it.

Photo 16: This area is covered under a 404 permit. There is a sediment plume into the creek on both sides from the CDOT project. Consult the with Army Corps. for direction in cleaning up this area and installing proper BMP's to prevent an illicit discharge.

Photo 17: Remove sediment from around the inlet. Clean sediment out of the pipe apron. Install a filtering BMP in front of the inlet, such as straw bales. Temporarily or permanently stabilize associated slopes discharging to the inlet. Add check dams to upstream bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it.

Photo 18: Re-grade so that run-on water from Home Depot detention pond travels in the grassy strip outside the compacted berm of the project and is directed into the associated inlet in the existing natural channel.

Photo 19: Remove sediment from around the inlet. Clean sediment out of the pipe apron. Replace erosion logs. Temporarily or permanently stabilize associated slopes discharging to the inlet. Add check dams to upstream bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it.

Photo 20: Clean around the inlet and add stronger inlet protection.

Photo 21: see photo

Photo 22: This area is covered under a 404 permit. There is a sediment plume into the creek on both sides from the CDOT project. Consult the with Army Corps. for direction in cleaning up this area and installing proper BMP's to prevent an illicit discharge.

Photo 23 & 24: Clean sediment out of pipe and dispose of properly. Install inlet protection.

Photo 25: Remove sediment from the inlet. Clean sediment out of pipe and dispose of properly. Install inlet protection. Temporarily or permanently stabilize associated slopes discharging to the inlet. Add check dams to upstream bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it.

Photo 26: Temporarily or permanently stabilize associated slopes discharging to de-nuded channels. Add check dams to upstream bare channels. Alternatively, add a compacted berm at the end of the channel with an excavated sediment trap at in front of it.

ENCLOSURE 4:
STATEMENT OF CERTIFICATION

Kiewit Infrastructure Co.

Response to Request for Information Pursuant to Section 308 of the Clean Water Act

I certify under penalty of law that this response and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations.

Signature

Printed Name and Title

Date



Office of Enforcement and Compliance Assurance (2201A)
EPA-300-B-15-001 May 2015

U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

Small Business Programs

www.epa.gov/smallbusiness
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

EPA's Asbestos Small Business Ombudsman

www.epa.gov/sbo or 1-800-368-5888
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

EPA's Compliance Assistance Homepage

www2.epa.gov/compliance
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

EPA's Compliance Assistance Centers

www.assistancecenters.net
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

Agriculture

www.epa.gov/agriculture/

Automotive Recycling

www.ecarcenter.org

Automotive Service and Repair
ccar-greenlink.org/ or 1-888-GRN-LINK

Chemical Manufacturing
www.chemalliance.org

Construction
www.cicacenter.org or 1-734-995-4911

Education
www.campuserc.org

Food Processing
www.fpeac.org

Healthcare
www.hercenter.org

Local Government
www.lgean.org

Metal Finishing
www.nmfrc.org

Paints and Coatings
www.paintcenter.org

Printing
www.pneac.org

Ports
www.portcompliance.org

Transportation
www.tercenter.org

U.S. Border Compliance and Import/Export Issues
www.borderecenter.org

EPA Hotlines, Helplines and Clearinghouses

www2.epa.gov/home/epa-hotlines
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

Clean Air Technology Center (CATC) Info-line
www.epa.gov/ttn/catc or 1-919-541-0800

Superfund, TRI, EPCRA, RMP and Oil Information Center
www.epa.gov/superfund/contacts/infocenter/index.htm or 1-800-424-9346

EPA Imported Vehicles and Engines Public Helpline
www.epa.gov/otaq/imports or 734-214-4100

National Pesticide Information Center
www.npic.orst.edu/ or 1-800-858-7378

National Response Center Hotline to report oil and hazardous substance spills - www.nrc.uscg.mil or 1-800-424-8802

Pollution Prevention Information Clearinghouse (PPIC) - www.epa.gov/opptintr/ppic or 1-202-566-0799

Safe Drinking Water Hotline - www.epa.gov/drink/hotline/index.cfm or 1-800-426-4791

Stratospheric Ozone Protection Hotline

www.epa.gov/ozone/comments.htm or 1-800-296-1996

Toxic Substances Control Act (TSCA) Hotline

tsc hotline@epa.gov or 1-202-554-1404

Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

State Resource Locators

www.envcap.org/statetools

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

State Small Business Environmental Assistance Programs (SBEAPs)

www.epa.gov/sbo/507program.htm

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

EPA's Tribal Portal

www.epa.gov/tribalportal/

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

EPA's Small Business Compliance Policy

www2.epa.gov/enforcement/small-businesses-and-enforcement

This Policy offers small businesses special incentives to come into compliance voluntarily.

EPA's Audit Policy

www2.epa.gov/compliance/epas-audit-policy

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.